IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

WP(C).No. 13638 of 2007(S)

OA.301/2004 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH

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PETITIONERS:

1. GOVERNMENT OF INDIA, MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSION, DEPARTMENT OF PERSONNEL & TRAINING, NEW DELHI.

2. THE ACCOUTANT GENERAL (A & E) KERALA, P.B.NO.5607, M.G.ROAD,THIRUVANANTHAPURAM.

3. THE ACCOUNTANT GENERAL (A & E) KERALA, OFFICE OF THE ACCOUNTANT GENERAL (A & E), KARNATAKA, RESIDENCY PARK ROAD, BANGALORE-560 001.

BY ADV. SRI.TPM.IBRAHIM KHAN (SR.)

RESPONDENTS:

1. SHRI V.SUBRAMONIAM, SON OF LATE SHRI K.S. VENKATESWARAM, RETIRED INSPECTOR GENERAL OF POLICE, RESIDING AT 229, HARIKRIPA, S.MAIN, 13 CROSS, INDIRA NAGAR, IIND STATE, BANGALORE-560 038. (DECEASED).

2. MRS.PARVATHI SUBRAMONIAM,
WIFE OF LATE V.SUBRAMONIAM, DO. DO.

3. MEENA BALACHANDRAN,
RESIDING AT D/5, SHRESHTA, 473,
KILPAUK GARDEN ROAD,CHENNAI-600 010.

4. SARASWATHY MOORTHY,
RESIDING AT 314, 1844 W 7, AVE,
VANCOUVER, BCV 6, AIS8.

5. K.S. GEETHALAKSHMY, RESIDING AT 229,
HARIKRIPA, S.MAIN, 13 CROSS, INDIRA
NAGAR, IIND STAGE, BANGALORE-560 038.

6. K.S. VENKITESWARAN, DO. DO.

7. STATE OF KERALA REP. BY ITS CHIEF
SECRETARY TO GOVERNMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM.

BY SR.GOVT. PLEADER SRI.LAKSHMI NARAYANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON ON 21/11/2007 ALONG WITH WPC NO.29615 OF 2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 13638/2007

PETITIONER'S EXHIBITS:

EXT. P1 A PHOTOSTAT COPY OF THE ORDER DT. 3.8.06 OF THE CAT ERNAKULAM BENCH IN OA 301/04

EXT. P2 A PHOTOSTAT OF THE OA 301/04 ALONG WITH ITS ANNEXURES FILED BY THE RESPONDENT BEFORE THE CAT ERNAKULAM BENCH

EXT. P3 A PHOTOSTAT COPY OF THE REPLY STATEMENT FILED ON 16.2.05 BY THE UNDER SECRETARY, MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA ON BEHALF OF THE RESPONDENTS BEFORE THE CAT ERNAKULAM BENCH IN OA 301/04

EXT. P4 A PHTOSTAT COPY OF THE REPLY STATEMENT FILED BY THE STATE GOVT. DT. 24.5.06 IN OA 301/04

/TRUE COPY/

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

W.P.(C)Nos.13638 & 29615 of 2007

COMMON JUDGMENT

Balakrishnan Nair, J.

W.P.(C)No.13638/2007

The petitioners in this writ petition are the respondents in O.A.No.301/04 before the Central Administrative Tribunal, Ernakulam Bench. The first respondent was the applicant. During the pendency of the original application, he died and therefore, respondents 2 to 6, who were his legal heirs, got themselves impleaded and pursued the original application.

2. The applicant was a member of the Indian Police Service. He retired from service as Inspector General of Police, Kerala. Later, the said post was re-designated as Director General of Police. When the pension was re-fixed in the light of the recommendation of the Fifth Pay Commission,

the post held by him was treated as equivalent to the post of Director General of Police and the pension was sanctioned accordingly. Later, the petitioners felt that the first respondent is only entitled to get pension, now payable to the person holding the post of Inspector General of Police, which, according to them, is the present corresponding post. The orders passed in this regard are Annexures-X and XI in the original application. Challenging those orders, the original application was filed.

2. The petitioners herein resisted the application contending that the first respondent is entitled to get pension applicable to the post of Inspector General of Police only. The Tribunal considered the original application along with O.A. No.164/05, which was filed by a member of the Indian Forest Service, who retired from service as Chief Conservator of Forests. The Tribunal took the view that comparison of designation alone is

not permissible. The functional parity of the post held by the applicant and the existing post is relevant. In that view of the matter, it was held that the applicant was entitled to get pension payable to the Director General of Police and the original application was allowed. This writ petition is filed challenging the said decision.

4. The point that arose for decision was the interpretation of the newly introduced clause in All India Services (Death cum Retirement Benefits) Rules, 1958, which reads as follows:

> "Provided that the pension calculated under this Rule shall not be more than Rs.15,000/- per month subject to the condition that the full pension shall in no case be less than 50% of the minimum of the revised scale of pay introduced with effect from 1st day of January, 1996 <u>for the posts last held by the member of the service at the time</u>

of his retirement."

Going by the above provision, the applicant is entitled to get pension, which in no case be less than 50% of the minimum of the revised scale of pay introduced with effect from 1st day of January, 1996 for the post last held by him at the time of his retirement. Initially, as mentioned earlier, the petitioners herein took the view that the post held by the first respondent was equivalent to the post of Director General of Police. Later, the said view was reviewed and it was held that the post held by him cannot be treated as equivalent to the post of Director General of Police, which is, now, the highest post in the Police Department. But, the Tribunal, as mentioned earlier, noticed the functional parity between the post of Inspector General of Police, held by the first respondent and the present post of Director General of Police. The first respondent retired from service as the

Head of the Department. The present Head of the Department is Director General of Police. Now, the post of Inspector General of Police is an inferior or lower post and not that of the Head of the Department. So, having regard to the above relevant facts, the Tribunal upheld the contention of the applicant. We are in full agreement with the reasons and conclusions of the Tribunal. It is certainly a plausible view on the facts of the case and the Rule applicable.

In the result, the writ petition fails and it is dismissed.

W.P.(C)No.29615/2007

The point raised in this writ petition is identical to the point raised in W.P.(C)No. 13638/07. The only difference is that here the applicant was a member of the Indian Forest Service. The post held by him, as Head of the Department, was Chief Conservator of Forests. The

said post was later re-designated as Principal Chief Conservator of Forests. Since we have already upheld the decision of the Tribunal in O.A. No.301/04, concerning a member of the Indian Police Service, the decision of the Central Administrative Tribunal has to be upheld in the case of a member of the Indian Forest Service also, as the order of the Tribunal is a common order, based on common grounds.

In the result, this writ petition is also dismissed.

(K.Balakrishnan Nair, Judge)

21st November, 2007

(K.P.Balachandran, Judge)

tkv